

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 2004-CV-11836-RCL

TRANS-SPEC TRUCK SERVICE, INC.,
d/b/a TRUCK SERVICE
Plaintiff

V.

CATERPILLAR, INC.
Defendant

ORDER ON

**MOTION FOR PROTECTIVE ORDER BY
PLAINTIFF TRANS-SPEC TRUCK SERVICE, INC.
(Docket # 79)**

ALEXANDER, M.J.

This case is currently before this Court on a motion filed by plaintiff Trans-Spec Truck Service, Inc. ("Trans-Spec), for a protective order to quash two deposition subpoenas issued by defendant Caterpillar, Inc., to Trans-Spec's two expert witnesses. The Court is somewhat perplexed at the parties inability to resolve the matter themselves, and, to some extent, the issue itself appears moot

given that the initial dates proposed by Caterpillar for the depositions are now in the past.¹

On October 26, 2005, the District Court issued an amended scheduling order that included the following pertinent deadlines: expert reports from Trans-Spec by December 7, 2005; expert reports from Caterpillar by January 13, 2005; expert discovery to be concluded by February 17, 2006. Trans-Spec provided Caterpillar with its two expert reports on December 7, as required. The following day, Caterpillar contacted Trans-Spec's counsel regarding possible deposition dates for the experts. After apparently receiving no response, Caterpillar then sent on December 9, via mail and fax, notices of depositions for dates during the last week of December, between the Christmas and New Year's holidays. Trans-Spec indicated that the experts were not available that week, but would be available in January. Counsel for both parties then engaged in somewhat contentious discussions about the dates on which the depositions should take place. Despite Trans-Spec's assurances that the experts would be available for depositions, although not on the dates originally proposed by Caterpillar, Caterpillar ultimately felt the need to subpoena both experts.

¹Trans-Spec filed its motion on December 21, 2005, and Caterpillar its opposition on December 23, 2005. The District Court then referred the motion to this Court on January 3, 2006.

The subpoenas seem, at best, unnecessary, particularly given Trans-Spec's assurances that the experts would be available for depositions. Caterpillar has indicated that it needs to depose Tran-Spec's experts before Caterpillar's own experts can prepare their reports, due by January 13, 2005, but has provided no sound legal basis for this assertion. The Court therefore **ALLOWS** Trans-Spec's motion to the extent that it seeks to quash the subpoenas. Trans-Spec must still, however, make its experts available for depositions as soon as possible. Furthermore, the Court **DENIES** that portion of Trans-Spec's motion seeking costs. **SO ORDERED.**

1/6/06
Date

/s/ Joyce London Alexander
United States Magistrate Judge